IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.169 OF 2007
WITH
CHAMBER SUMMONS NO.253 OF 2007
IN
SUIT NO.66 OF 2004

Samarthmal Hajarimal Mehta. ..Plaintiff.

V/s.

Shri Pirchand Misrimal Bhansali. ..Defendant.

Ms.Usha Purohit for applicant.

Mr.Ashish Kamat i/b. Kartikeya & Associate for defenant.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 8, 2007.

P.C. :

1. Heard counsel for the parties. Perused the relevant material on record.

2. The grievance in this Chamber Summons is about appropriateness of the order passed by the Court Receiver dated 19th December, 2006. After having considered rival submissions across the bar, in my opinion, instead of recording detailed reasons, that may influence the decision making on the issue of fixation of royalty by the Court Receiver afresh, I would only indicate that the order in question deserves to be set aside, as it is not possible to

discern the basis, on which the Court Receiver arrived at the final conclusion in determining royalty amount of Rs.9,000/- in respect of suit premises. I say so because relevant observation of the Court receiver of the analysis made reads thus:

> " Heard the learned Advocates for the Plaintiff and Defendant on the issue of fixation of quantum of final royalty. I have perused the written submission submitted by both the sides. I have also perused the Hon'ble Appeal Court's Order dated 30th June 2006. I am conscious about the present state of the subject premises. Taking into consideration the area of premises the location where the subject premises is situated and the commercial exploitation thereof, if the final royalty is fixed in the sum of Rs.9000/- per month, it would be just, fair and reasonable."

Going by this discussion, it is not possible to assume as to what was the basis, which weighed with the Court Receiver to finally arrive at the figure of Rs.9,000/- per month as royalty amount. Suffice it to observe that such decision cannot stand the test of judicial scrutiny. Indeed, the Court Receiver while fixing royalty amount is not expected to elaborately deal with all the material, but nevertheless, he is required to spell out the principle applied by him in arriving at the figure which, he has finally arrived to be the royalty amount.

3. Accordingly, the impugned order of Court Receiver is set aside and instead the parties are relegated before the Court Receiver for afresh determination of the royalty amount. That procedure be completed expeditiously preferably within six weeks from the receipt of this order. All questions on merits are left open to be decided by the Court Receiver afresh in accordance with the law.

4. Needless to observe that in the mean while, the arrangement obtained during the pendency of adjudication procedure before the Court Receiver shall be continued until modified or altered by the competent Court. Chamber Summons disposed of on the above terms.

5. In view of the above order, nothing survives for consideration in Chamber Summons No.253 of 2007. Hence disposed of accordingly.